IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CIVIL REVISION APPLICATION NO.235 OF 2001

Ratnabai Telgi,
W/o Kappappa E. Telgi,
43 years of age, landlady,
H.No.287, residing near
Ambabi Temple, Mangor,
Vasco-da-Gama. ... Applicant.

versus

Mrs. Julie Fernandes,
W/0 Cruz Fernandes,
Teacher by Profession,
H.No.287, Near Ambani Temple,
Mangor, Vasco-da-Gama. ... Respondent.

Miss Gauri Bhonsale, Advocate for the Applicant.

Mr. S. G. Bhobe, Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 7TH FEBRUARY,2002.

ORAL JUDGMENT

Heard Miss Gauri Bhonsale, learned Advocate appearing for the Applicant and Mr. S. G. Bhobe, learned Advocate appearing for the Respondent. By consent, this Revision is heard for final disposal at the stage of admission.

2. This Revision has been filed by the Applicant/Original Plaintiff challenging the dismissal of Civil Miscellaneous Application No.96/2000/A, dated 5th July, 2001, by the Civil Judge, Senior Division, Vasco-da-Gama. The aforesaid application had been filed by the Applicant/Original Plaintiff for restoration of the suit which was dismissed for non appearance of the Plaintiff on 11th August, 1999. The

reason pleaded for restoration of the suit by the Applicant/Original Plaintiff was that the learned Advocate appearing for the Applicant/Original Plaintiff had recorded a wrong date i.e. 16th August, 1999 in place of 13th August, 1999. This turned out to be factually incorrect by the reply of the Defendant as the suit was dismissed on 11th August, 1999. The Applicant/Original Plaintiff withdrew the earlier application and the present application came to be filed in which it was alleged that the suit was dismissed on 11th August, 1999 and the learned Advocate appearing for the Original Plaintiff had wrongly noted the date as 16th August, 1999. In support of the application, an Affidavit of the learned Advocate appearing for the Applicant was filed. An objection was taken on behalf of the Respondent/Defendant that the xerox copy of the diary of the learned Advocate appearing for the Applicant had not been produced. The learned Trial Court dismissed the application on the ground that (i) copy of the diary of the learned Advocate appearing for the Applicant/Original Plaintiff had not been filed and (2) also in view of the fact that in the earlier application a wrong date had been mentioned which went a long way to show that the Plaintiff was not interested in prosecuting the suit.

3. Miss Gauri Bhonsale, learned Advocate

appearing for the Applicant, who has very ably argued the Revision, has submitted before me that the Affidavit of the learned Advocate appearing for the Plaintiff ought to have been considered by the learned Trial Court. In the Affidavit, a statemennt had been made that a wrong date had been noted. In fact, by quoting the date 13th August, 1999 instead of 11th August, 1999 in the earlier application, fortified the contention of the Plaintiff's Advocate that a wrong date had been noted.

4. I have given my anxious consideration to the submissions advanced by the learned Advocates appearing for the parties and I am unable to agree with the view of the Trial Court. The Affidavit ought to have been considered showing sufficient cause for restoration of the suit as the Advocate had noted a wrong date. Production of the copy of the diary ought not to have been insisted upon. Stating that the suit was dismissed on 13th August, 1999 instead of stating that the suit was dismissed on 11th August, 1999, does not lead to an inference that the Plaintiff was not interested in prosecuting the suit. The Court must examine whether sufficient cause is shown for the non appearance of the Plaintiff. If the Plaintiff was informed a wrong date, which is infact borne out from the Affidavit of the Advocate, according to me the

Plaintiff has shown sufficient cause for non appearance on 11th August, 1999.

5. Mr. S. G. Bhobe, learned Advocate appearing for the Respondent/Defendant has vehemently tried to support the finding of the Trial Court.

6. In view of this, the Order of the learned Trial Court dated 5th July, 2001, is hereby quashed and set aside and the Civil Miscellaneous Application No.96/2000/A filed by the Applicant/Original Plaintiff is allowed. The Order dismissing the suit for the non appearance of the Applicant/Original Plaintiff is quashed and set aside. The suit shall stand restored on payment of costs of Rs.500/- by the Applicant to the Respondent.

7. In the result, Civil Revision Application No.235/2001 is allowed.

(P. V. HARDAS)
JUDGE

RD.